



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Monday, February 27, 2006

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, February, 27, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Earlene Plavchak and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Torres moved to approve the minutes of the January 23, 2006 meeting as submitted. The motion was seconded by Mr. Dierckman and **APPROVED 4-0.**

Mrs. Conn gave the Department Report. Item 5h, Kingswood - Policka Property, which was tabled from the Hearing Officer meeting, would need a suspension of rules for public notice less than 25 days.

Mr. Molitor gave the Legal Report. There had been a hearing on the lawsuit filed by Mr. Tom Yedlick against Mike Hollibaugh and the Board requesting a separate hearing on his motion to dismiss the Martin Marietta petition. The Court declined to rule in favor of Mr. Yedlick to preclude the Board from hearing the Martin Marietta petition. The Court was informed that Mr. Yedlick would have the opportunity to speak at this meeting if the petition was heard. In addition, he reminded everyone of the special rule that was passed regarding the hearing of the Martin Marietta petition that essentially twice as much time would be allowed for the petitioner and remonstrators to speak. At the beginning of the special meeting that had been scheduled in December, the Mayor had been scheduled to give a report. The Mayor would be giving that report tonight. The Mayor would like to give that report at 7:30 PM before the Martin Marietta petition would be heard.

H. Public Hearing

1-4h. TABLED ~~Baby Tracts, lots 20-21 - St. Mary & St. Mark Coptic Orthodox Church~~

~~Petitioner seeks special use amendment approval to expand a church parking lot.~~

~~Docket No. 05090019 SUA Chapter 9.02.A special use expansion~~

~~Docket No. 05090020 V Chapter 23E.07.C.1 parking in front yard~~

~~Docket No. 05090021 V Chapter 23E.07.C.2 no parking lot curbing~~

~~Docket No. 05090022 V Chapter 9.04.03.F over 35% lot coverage~~

~~The site is located at 800 E 110th Street and is zoned R-3/Residence within the Home Place District. Filed by Robert Epstein of Epstein, Cohen, Donahue, Mendes.~~

5h. Kingswood, Sec 2, lot 31 - Policka Property

The applicant seeks the following development standards variance:

Docket No. 06010013 V ZO Chapter 25.02.01 front yard fence height

The site is located at 11125 Westminster Way and is zoned S-2/Residence.

Filed by Greg & Gretchen Policka.

Present for the Petitioner: Greg Policka, 11125 Westminster Way. He used a PowerPoint presentation with his main points. The property is a corner lot, making two front yards. He had raised the fence from the acceptable 3.5 feet to 5 feet on essentially the back and side yard portion. They have a new puppy and needed the higher fence. The original picket fence was approved in 1999 by the Kingswood Board. The fence was erected in this location due to the existing landscaping which prevented it from being placed on the building line and even with the garage. Pictures were indicated in the packet. It was raised one foot in October 2005 and approved by the Kingswood Board. There had been a complaint about the 5-foot height. Mr. Brennan, Carmel Code Enforcement, came out to look at the fence. He found that the fence was setback 20 feet from the west property line and Westminster Way right-of-way and it does not interfere with the vision triangle at the intersection of the two streets. There are numerous fences currently in Kingswood that are higher and not semi-opaque in design. This fence was erected by Award Fence in Carmel. The strict application of the terms of the Zoning Ordinance would result in practical difficulties in the use of the property. Lowering the fence to 3.5 feet would not serve the needs of the family and could create a safety hazard. Current landscaping would need to be completely redone if the fence was moved to the normal side-yard position, creating unnecessary financial investment and work.

Mrs. Conn reminded the Board that they needed to vote to suspend the rules.

Mr. Dierckman moved to suspend the rules to allow for a ten-day public notice. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.**

Favorable Comments:

Bill McEvoy, 5120 Williams Circle in Kingswood, stated that Mr. Policka meticulously maintains his property and landscaping. He did not find the fence offensive or an eyesore. He pointed out that when the fence was initially approved, Mr. Booher was on the Kingswood Board that approved it. He felt there was a little hypocrisy. The fence is attractive and fits in well with Mr. Policka's landscaping.

Unfavorable Comments:

Scott Wyatt, attorney with Campbell Kyle Proffitt, representing Christopher and Donna Booher. The Booher's reside at 11134 Westminster Way, across the street from the property and fence in question. They are most directly impacted by the variance request because they are the ones who see the fence when they stand outside their door. The fence was not just raised; it was changed in design from the original fence. Pictures were shown. The planks are separated a great distance apart and it looks like a snow fence. It is an eyesore. It looks like it has chicken wire at the top to create an additional barrier to the dog. His clients feel there are no similar fences in the neighborhood. There is only one other property in the neighborhood with a second front yard that has a fence. That fence is more of a shadow box decorative style with greenery installed in order to minimize the impact on the eye. His clients believe that the subject fence will reduce their property value. There are underground fences that could be installed for the Policka's dog or the dog could be tethered. There are other ways the fence could be reduced and minimize the impact on his clients. The fence is already in place, but they asked that this

request be considered as if the fence had not been installed. They felt if it was approved, it needed some additional commitments, such as greenery to minimize the impact of the fence.

Rebuttal:

Mr. Policka stated there was not any chicken wire at the top of the fence, but there is some black plastic that prevents the dog from putting his paws on top and jumping over.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The fence is set back approximately 20 feet, which is also the road right-of-way. The fence does not interfere with the vision triangle at the intersection. There is a set of covenants with the Kingswood neighborhood that enforces the design and location of the fence. Tonight the Board can only vote on the height of the fence. The Department recommended positive consideration. Landscaping could be a possible condition.

Mr. Dierckman felt the fence was ugly and needed landscaping.

Mrs. Torres did not have trouble with the height of the fence, but felt it should be more of a shadow box with landscaping.

Discussion followed regarding landscaping possibilities.

Mrs. Plavchak felt the height was okay, but the design needed help and camouflaged with some kind of year-round evergreens.

Mr. Policka stated that he could work on the landscaping. He wanted to note that there were various fences within the development that were more of an eyesore than his fence.

Mrs. Conn recommended that Mr. Policka could meet with Scott Brewer, the Urban Forester, for landscaping plans.

Mr. Wyatt wanted the Urban Forester to also talk to his clients regarding the landscaping plans.

Mrs. Conn stated that the plans would be available in the Department's file and would be available for review.

Mr. Dierckman moved to continue **Docket No. 06010013 V, Kingswood – Policka Property** to the March 27, 2006 meeting. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0.**

6-7h. Frank E Hawkins, lot 6 - Professional Offices

The applicant seeks the following use variance & development standards variance approvals:

Docket No. 05120013 UV	ZO Chapter 9.01	permitted uses
Docket No. 05120014 V	ZO Chapter 27.03	curbed/paved parking area

The site is located at 320 2nd Street SW, and is zoned R-3/Residence within the Old Town Overlay-Character Subarea. Filed by Frederick & Jennifer Grief.

Present for the Petitioner: Fritz Grief, 9061 Pinecone Way, Indianapolis, IN. He is the owner of the property and would like to use the property for an accounting/professional office. They would maintain the residential character of the property. They want to be able to see clients and have better signage. They would prefer to keep the gravel driveway until they see how it works out before committing to curbed and paved parking.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. This site is within the Old Town Overlay. The Comprehensive Plan promotes a mix of different uses that compliment each other with offices and residential. The gravel parking aids with drainage on-site and provides water to filter through to the plants on-site. The Department recommended favorable consideration of both petitions.

Mr. Dierckman moved to approve **Docket Nos. 05120013 UV and 05120014 V, Frank E Hawkins, lot 6 - Professional Offices.** The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

8h. Orin Jessup Land Co, Sec 1, lots 140-142 pt - Mr. Window

The applicant seeks the following use variance approval for offices:

Docket No. 05120024 UV ZO Chapter 9.01 permitted uses

The site is located at 745 E 107th St. and is zoned R-3/Residence within the Home Place Business District. Filed by Mitch Sever of Sever & Associates.

Present for the Petitioner: Mitch Sever Planning and Zoning Consultant of Sever & Associates, 8750 Yardley Court, Indianapolis, representing Mick Widmeyer, the property owner. A picture of the property was shown. It was purchased in run-down condition. Since then the roof over the porch was removed because of snow damage. They would like to remodel and convert the house into an office space. The Home Place Overlay Plan recommends this area to be used for commercial offices.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The site is an R-3 residence that lies within the Home Place Business District. The Comprehensive Plan does address the development and redevelopment in the area. The Department sees the proposed use as acceptable and recommended positive consideration.

Mrs. Plavchak moved to approve **Docket No. 05120024 UV, Orin Jessup Land Co – Mr. Window.** The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

9-11h. TABLED 116th/Keystone Retail Shops

~~Petitioner seeks the following development standards variances for signage:-~~

~~**Docket No. 06010018 V** Chapter 25.07.02-09.b total # signs on site~~

~~**Docket No. 06010019 V** Chapter 25.07.02-09.b # signs oriented south~~

~~**Docket No. 06010020 V** Chapter 3.07 definition of sign (logo %)
The site is located at the northeast corner of 116th St. and Keystone Ave. and is zoned
B-3/Business within the SR 431 Overlay. Filed by Drew Warner of Eclipse Realty.~~

12h. Old Town Bed & Breakfast

The applicant seeks use variance approval for a small bed & breakfast inn:

Docket No. 06010021 UV ZO Chapter 8.01 permitted uses

The site is located at 521 1st Ave NW and is zoned R-2/Residence within the Old Town Overlay – Character Subarea. Filed by Douglas Roby & Loretta Tuttle.

Present for the Petitioner: Loretta Tuttle, 451 American Way N., Carmel and Douglas Roby currently resides in Coppergate but will live on-site at the Bed & Breakfast. The Bed & Breakfast would have a maximum of three rooms rentable per night. They would be doing renovations to the home. Mr. Roby would be living on-site and Ms. Tuttle would be there throughout the day. One of them would be present at all times. They hope to cater to the business traveler as well as travelers to the Carmel Arts District.

Mr. Roby indicated that they had met with the Urban Forester for landscaping plans. There are several old trees on the site that need to be cleaned up.

Unfavorable Comments:

Jenny Chastain, 511 Second Avenue NE, Carmel, representing a group of homeowners and residents in Old Carmel who are concerned about preserving the character and the homes in the neighborhood. The property is zoned R-2 residential. They had concerns that if this variance was approved, it would open a Pandora's Box for the neighborhood becoming commercial properties. They have no objection to the development along Main Street and the homes being turned into businesses along Range Line. But they do have concerns about businesses invading the residential area. This is a residential area with no businesses. This is a unique area and they would like to keep the residential area.

Rebuttal:

Mr. Roby stated that they were concerned about the quality of the neighborhood. They will renovate it and maintain it as a residence. It will have four private bedrooms with separate baths. He will live in one and rent the other three.

Ms. Tuttle stated that the house will always remain a single family residence even if their business is not successful.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. This is a Use Variance for a specific Bed & Breakfast and the property would revert back to a single family home if the business did not succeed. The site is one block west of Range Line Road in the Old Town Overlay. The Comprehensive Plan promotes mixed uses of residential, offices and retail. The Department recommended positive consideration.

Mr. Dierckman asked how long an individual can stay in a Bed & Breakfast. He did not want it to become three efficiency apartments.

Ms. Tuttle stated that she believed the rules for running a Bed & Breakfast stated that a guest could not stay longer than 30 days.

Mr. Hawkins stated that this decision is not precedent-setting.

Mrs. Torres asked if an ADLS would come before the Plan Commission.

Mrs. Conn stated that it will not, because it is zoned R-2 and will remain residential.

Mr. Hawkins asked about the surrounding properties and their uses.

Mr. Roby stated there is a cabinet shop with parking, a barbershop and a duplex.

Mr. Dierckman moved to approve **Docket No. 06010021 UV, Old Town Bed & Breakfast**. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

At 6:55 PM the meeting was adjourned until 7:30 PM.

13-14h. Martin Marietta Materials - Mueller Property South

Petitioner seeks special use approvals to establish surface limestone operations & an artificial lake on 96.921± acres.

Docket No. 05090003 SU Chapter 5.02.02 mineral extraction

Docket No. 05090004 SU Chapter 5.02.02 artificial lake

The site is located at the southwest corner East 106th Street and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

Mr. Phears asked in what capacity the Mayor was speaking.

Mr. Molitor stated that the Board had passed a special rule at the November meeting for this hearing that would accommodate the community's interest. As part of that special rule, a maximum of fifteen minutes was allotted for the Mayor's report.

Mr. Phears asked if Mayor would be sworn and noted that they wanted to go on record as objecting to his report.

Mayor Jim Brainard gave a presentation outlining the various actions taken during his administration at the mining site now operated by Martin Marietta, including the petitions that were granted and denied. Before the area was annexed into the City, the City could regulate the zoning under State law, but could not issue any business regulations. The City has passed two Ordinances that businesses, including any mining companies, would need to abide by. Martin Marietta has sued the City and the ordinances are in appeal. Meetings have been held to try to reach a settlement. The City estimates that they have spent over a half million dollars over the last several years dealing with this situation. He felt that Martin Marietta had not made enough commitments. This is an industrial use in a residential area. Carmel prides itself on its quality of life. This is an expansion from the site that was in place before

Kingswood and other subdivisions were built. The City doesn't need this industrial expansion in the middle of Carmel. He asked the Board to say no to this application.

Mr. Phears stated they did not expect the Mayor to give a presentation and had questions for the Mayor. He asked if the Mayor had been opposed to the Martin Marietta operations from the beginning.

Mayor Brainard: No.

Mr. Phears: Did you make a campaign promise to oppose any expansion of Martin Marietta's activities in 2002?

Mayor Brainard: He began this job in 1996. He indicated that he did not think it was appropriate that blasting came closer to residential neighborhoods.

Mr. Phears: Did you tell Kingswood you would do everything you could to help them stop it?

Mayor Brainard: I think that is generally right.

Mr. Phears: Would you agree that you have done everything to stop it?

Mayor Brainard: He felt he had done everything he could and had worked hard at settlement meetings. They had tried hard to find common ground.

Mr. Phears: You are committed to do everything you can to help stop this application.

Mayor Brainard: He felt it was fair to say he did not feel mining operations should expand closer to Kingswood.

Mr. Phears: Did you have the two mining ordinances written?

Mayor Brainard: The Department of Community Services, whose Director he appointed, worked to write the ordinances.

Mr. Phears: Did you direct DOCS to have them written?

Mayor Brainard: Yes.

Mr. Phears: Did you direct DOCS to hold the Staff Report recently?

Mayor Brainard: I asked to see and review the Staff Report.

Mr. Phears: Did you ask them to hold the Staff Report that otherwise would have been sent last week so that you could see it?

Mayor Brainard: Yes.

Mr. Phears: Did you discuss the Staff Report with Mr. Hollibaugh or anybody?

Mayor Brainard: No one.

At this point, Mr. Hawkins interrupted to say they were losing valuable time and there would be a time to rebut these comments later in the hearing.

Mayor Brainard felt they were trying to make a record for the Court. He is a citizen and has every right to make these statements, as well as Mayor. (The Mayor left at this point.)

Mr. Phears: For the record, what he wanted to ask the Mayor about the Staff Report was whether the Mayor announced in a meeting that he was very unhappy with the Staff Report that he had received in December and whether the Mayor had announced in that meeting that he would see to it that the Staff issued a different report and in fact, whether the Staff has issued a different report and why.

Mr. Hawkins stated it would be duly noted. He reminded everyone of the schedule. The petitioner would have 20 minutes for presentation. The remonstrators and supporters would have 10 minutes. Organized remonstrators would have 20 minutes. The Petitioner would have 10 minutes for rebuttal. The Department Report would take 30 minutes or less. He asked for a show of hands as to how many remonstrators were planning to speak. There were approximately 20 hands, therefore everyone would have about one minute to speak. Each would need to give their name and address and move on to their topic and not to repeat anything that had already been said. The Board had a variety of information given to them over the last month, so this meeting was not the sole source of any decisions.

Mr. Molitor suggested they determine how many of the speakers represented organized groups since they have additional time.

After a show of hands, it was determined they would have roughly two minutes each.

Present for the Petitioner: Zeff Weiss, attorney with offices at 3400 One American Square on behalf of Martin Marietta Materials, Inc. Also present were John Tiberi, Regional Vice President of Martin Marietta and Wayne Phears who would be helping present the case. He asked to address a procedural issue with the Staff Report, because he was not sure they could proceed tonight. Martin Marietta is entitled to fair, orderly, impartial review by the Staff and by the City prior to bring this matter to the Board. A Department Report was issued by the Staff for a December 12, 2005 hearing. They believe that report was based on the standard process that the Staff follows: submittal of the materials by the Petitioner, a TAC review, maybe some input from other parties and then issuance of a Department Report. That occurred and was generally favorable to Martin Marietta with one issue open and that was blasting. When that occurred they advised the Staff that the Indiana Department of Homeland Security had exclusive jurisdiction on blasting in the State of Indiana. After that things started changing from the ways things normally occurred. At that point, they believe the Kingswood residents imposed themselves on the Mayor to get involved and all of a sudden they were out of the normal realm of how things worked through the Staff. They were advised that the Staff Report would be changed because it was inappropriate. It has been changed. It is not just an update, but a changed report. The one that was sent today was outside of the timeframe required by law and does not look like the one that was sent in December. There was a request for a continuance of the December 12 hearing so that they could get together to discuss the issue of blasting. They had agreed to that and thought it would be productive. But, from that day forward, they never got anything from the Staff. They got a little bit of a run-around and then the scheduling of tonight's hearing. He had inquired about the Department Report and was

told it would be issued in the regular course, which was last Wednesday. He felt the reason it was not issued was because the Mayor wanted the Staff Report to comply with the Kingswood vision of what the law should be in the City of Carmel. There is an Ordinance that must be followed and the Staff Report and the Mayor failed to address that. They tried to change the law a couple of times in Carmel in order to address Martin Marietta and that didn't work. Now the Mayor has told the Board that he wants the Board to deny this. It is inappropriate, unfair and denies Martin Marietta due process. By reviewing the file, he also felt there had been inappropriate contact with the Board. Specifically there is a letter in the file from Mr. Mark Bromund addressed to Mr. Hawkins, as well as an email from Joseph Hession to all the BZA members. Passing those along to the Board was in violation of Indiana Law. The new Staff Report, which had been changed, was sent out in a timeframe which was impermissible. He had not received a copy of the report until today when he stopped by DOCS around 4:00-4:15 PM. He understood it had been emailed around 1:00-1:30 PM, but he did not receive it, for whatever reason, until after 6:00 PM. Indiana Code 36.7.4.920 provides specific things that can and cannot happen in terms of contact with BZA members. Your legal counsel will tell you that no one can contact the Board and try to influence your decisions, not even the staff. The staff can give a Department Report no less than five days before the hearing to give the Petitioner an opportunity to review and consider their response. They had been advised by the Board's counsel that the Staff Report would not be issued until after the Public Hearing. Therefore, the Board cannot pay attention to that report. It is biased and tainted. Unfortunately, the Board already had that report, so he had to object. Indiana Law governs how we operate. It says under Section 920(g): "A person may not communicate with any member of the Board before the hearing with the intent to influence the members' action on a matter pending before the Board." It goes on to say that "...not less than five days before the hearing, however, the staff may file with the Board a written statement setting forth any facts or opinions relating to the matter." That did not happen and they object as a result of that. The process must be fair, orderly, impartial and judicious in terms of the overall process. The report is tainted; the staff can not work free of the Mayor's over sight. He felt it was inappropriate for the Mayor to tell the Board to deny this petition. The December 12 report was impartial. The difference between the December 12 report and today's report is the influence of a lot of the Kingswood residents pressuring the Mayor to do something. It was the intent to mine this land in the 1960's before these subdivisions were developed. This is a seamless expansion of the mining, pursuant to the statute and ordinance that applies. He asked the Board to ignore today's Staff Report and let the original December 12 report stand, because the Staff has been tainted in the process.

Mr. Molitor asked if Martin Marietta was requesting that the Board delay the hearing a minimum of five days in order that they could respond to the Staff Report.

Mr. Weiss did not feel that the issue was just the timing of the release of the report, but that the report is tainted. It doesn't reflect the original report. They had not submitted any thing new since the report that was issued on December 12 other than respond to blasting which they felt was controlled by the State of Indiana. They felt they should go forward with the December 12 Department Report and disregard any staff comments with regard to blasting. They had made voluntary commitments with respect to blasting and were willing to talk about it. He felt they should ignore the newest Staff Report and look solely at the Department Report that was issued for the December 12 hearing which addresses all the merits of the petition, other than the issue of blasting. In the newest report, the Staff has turned its position based on what the Mayor has stated. The Mayor is the direct supervisor of the Staff and appoints three of the five members of the BZA.

Mr. Molitor stated that Mr. Weiss had accurately stated the Law for the distribution of the Staff Report.

Mrs. Torres asked if the Board heard this petition, are they going to be defending themselves in a law suit or would it be better to dismiss this and start with a clean slate.

Mr. Dierckman agreed.

Mr. Molitor stated there could be a remedy or the Board could recuse themselves from the consideration of this petition.

Mr. Phears stated there would probably be another lawsuit no matter what happens.

Mr. Hollibaugh asked if it would be permissible to hold the Public Hearing tonight so that the citizens that were here could speak on the record, the issues could get on the table and the Board could take it under advisement.

Mr. Molitor stated that was possible and up to the Board. On the other hand, there is the potential difficulty for each Board member. If the Board members recused themselves, the alternate members would be appointed by authorities who would normally appoint the members. Three of those are appointed by the Mayor.

Mr. Phears stated they would rather get it right, than move quickly and get it wrong. He was not sure Humpty Dumpty could be put together again. The Mayor appoints Board members and makes a speech that addresses none of the factors involved and urges the Board to turn it down. Communications have been passed along to the Board and a third Staff Report.

Mr. Hawkins asked if it would be appropriate to have a brief recess. He reminded everyone to refrain from speaking out and clapping.

Mr. Dierckman outlined how he makes his decisions on petitions by listening to the petitioner and the remonstrators. Then he looks through the information and makes his decision based on all the information. There is a historical record that sometimes the Board goes against the Department. He felt the Board did a good job of being open and listening to the case and making the best decision they could make. He wanted to hear from Martin Marietta, but did not want them to use that as a caveat for a lawsuit. If they do not have faith in the Board and are going to use that as a caveat, then the conversation should be terminated. Personally, he was insulted by the whole process. The Board members are educated people that can listen to both sides makes their arguments and then make their decisions based on facts.

Mr. Hawkins agreed with Mr. Dierckman's statements. The Board could be as objective as they have in the past. He did not want to go through two or three hours and then come back and hear it has to be redone.

Mr. Phears stated that the Board has done a good job on prior petitions. He did not intend to suggest that the Board had acted improperly. He understands the Board takes its obligations seriously. Their concern is how difficult it has been made for the Board to carry out its responsibilities after the

Mayor's statement and the issuance of multiple Staff Reports, hours before the meeting. They would probably like to take a few minutes to speak with their client.

Mrs. Plavchak and Mrs. Torres agreed with Mr. Dierckman's statements on the decision-making process.

Mr. Molitor stated that one of the remedies could be to throw out the Staff Report. Another could be to postpone the hearing for a minimum of five days so that there is adequate time for response. Another would be to give the Staff Report whatever weight it deserves, but not give it undue weight. He was not clear as to Martin Marietta's suggested remedy.

Mr. Weiss felt that the new Staff Report, which was not issued in a timely basis, should be thrown out. The Staff should not be able to speak as to what was in the new Staff Report and should proceed with the original Staff Report. He asked for ten minutes to speak with their client.

A ten minute recess was taken.

Mr. Weiss stated that in light of the Statute, under no circumstances could they go forward tonight because the five days could not be waived on behalf of the public. They recommended the matter be tabled tonight. They would get together with Mr. Molitor, Mr. Kane representing some Kingswood remonstrators and the Staff, to try to determine how they could move forward following the Statute for a fair hearing.

Mr. Molitor recommended that the Board continue the matter until the regular meeting in March.

Mr. Weiss was agreeable.

Mr. Dierckman moved to continue **Docket Nos. 05090003 SU and 05090004 SU, Martin Marietta Materials – Mueller Property South** to the first item on the next agenda, March 27, 2006, and give it a two-hour time limit, with the remaining Public Hearing beginning at 8:00 PM. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

I. Old Business.

There was no Old Business.

J. New Business.

There was no New Business.

K. Adjourn.

Mrs. Torres moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**. The meeting was adjourned at 8:30 PM.

James R. Hawkins, President

Connie Tingley, Secretary